Gurit Kaur a/p Sohan Singh v Datuk Bandar Kuala Lumpur & Anor

HIGH COURT (KUALA LUMPUR) — APPLICATION FOR JUDICIAL REVIEW NO WA-25–229–08 OF 2017
NORDIN HASSAN J
1 NOVEMBER 2018

Administrative Law — Judicial review — Certiorari to quash decision of respondents — Application by applicant — First respondent as local authority in charge of city of Kuala Lumpur issued development order — Whether applicant had locus standi to bring application — Whether requirement under r 5(5) and 5(6) of the Planning (Development) Rules 1970 had been complied with by first respondent — Whether decision of first respondent tainted with illegality, irrationality, unreasonableness or procedure impropriety

Local Government — Town planning — Development order — First respondent local authority in charge of the city of Kuala Lumpur — Certiorari to quash decision of first respondent issuing development order — Whether applicant had locus standi to bring application — Whether requirement under r 5(5) and 5(6) of the Planning (Development) Rules 1970 had been complied with by first respondent — Whether decision of first respondent tainted with illegality, irrationality, unreasonableness or procedure impropriety — Planning (Development) Rules 1970 r 5(5) & (6)

This was the applicant's judicial review application seeking, inter alia, for an order of certiorari to quash the decision of the first respondent in issuing a development order. This development order was for the development of three blocks of 37 storey condominium on Lot 9420, Mukim Kuala Lumpur, Wilayah Persekutuan, Kuala Lumpur. The applicant was a registered owner of a parcel of Tiara Faber Condominium ('the condominium'). The first respondent was the planning authority in charge for the control and regulating of proper planning in the city of Kuala Lumpur in accordance with the Federal Territory (Planning) Act 1982. The second respondent was the registered owner of Lot 9420 and also the developer for the proposed development of the three blocks 37 storey condominium. The second respondent filed an application to the first respondent for planning permission for the proposed development of the said 37 storey condominium. An advertisement in local newspapers were made by the first respondent to give notice of the proposed development and the right to qualified person to make objections. Thereafter, by a letter to Tiara Faber Management Corp, the first respondent informed about the hearing of the objection and the applicant's husband had attended

the session. The proposed development was considered by Jawatankuasa Teknikal Pusat Setempat ('JKTPS') and subsequently by Jawatan Kuasa Pusat Setempat ('JKPS'). The meetings of JKTPS and JKPS were carried out by the first respondent and its members which consisted of directors from various internal technical department of Kuala Lumpur City Hall ('DBKL') and other external agencies. Comments and input from the internal technical department of DBKL and external agencies were also taken in considering the second respondent's application for planning permission. JKPS granted a condition approval for the proposed development. Having fulfilled all the said conditions required by JKPS, the development order was issued by first respondent to the second respondent. Hence, this application.

Held, dismissing the application with costs of RM3,000:

(1) The strata title showed that the applicant was a registered owner of a parcel of the condominium. The condominium was at Lot 47055 and based on the location plan, Lot 9420 where the proposed development to be carried out shared the boundry with Lot 47055. In the circumstances, the applicant had fulfilled the requirement of r 5(3)(a) of the Planning (Development) Rules 1970 ('the Rules') being the registered owner of a parcel of the condominium where its land was adjoining land to which the application relates. It was misconceived to argue that the applicant's parcel must touch the boundry of the said development land. This certainly was not the intention of the legislature in having r 5(3)(a) of the Rules (see paras 8–11).

(2) This case involved a change in density. As such, the applicant had the locus standi to initiate this application for judicial review (see paras 12–13).

(3) The requirement under r 5(5) and 5(6) of the Rules had been complied with when the first respondent had fixed a time and place of the objection session and this was informed to the Tiara Faber Condominium Management Committee by letter from the first respondent. The reading of r 5(6) clearly showed that there was no requirement for the first respondent to issue a notice to the the registered owner of the parcel of the condominium. Therefore, the contention that the first respondent had failed to comply with r 5(5) and 5(6) of the Rules was untenable and devoid of any merit (see paras 17–18 & 20).

(4) Rule 5(8) of the Rules related to an act after the decision had been made. As such it could not be a ground to quash the decision which had already been made by the first respondent to issue the said development order. As regards the grounds of irrationality and unreasonableness of the decision to issue the development order, the first respondent had complied with all the requirement of the Rules. The first respondent had come to its decision after a comprehensive process and after having considered all

relevant matters and comments from the objectors, the internal technical departments of DBKL as well as the external agencies (see paras 24–25).

(5) On the issue of non-compliance with the KL Structure Plan 2020, this structure plan was merely a general policies to guide the development of Kuala Lumpur. This structure plan did not contain any detailed physical planning for specific area and more importantly this instrument was not binding and subject to changes when the needs arose (see paras 33–34).

(6) Therefore, the decision of the first respondent in issuing the development order was not tainted with illegality, irrationality, unreasonableness or procedure impropriety (see para 38).

[Bahasa Malaysia summary

Ini adalah permohonan semakan kehakiman pemohon yang mencari antara lain untuk satu perintah certiorari untuk membatalkan keputusan responden pertama dalam mengeluarkan perintah pembangunan. Perintah pembangunan ini adalah untuk pembangunan tiga blok kondominium 37 tingkat di Lot 9420, Mukim Kuala Lumpur, Wilayah Persekutuan, Kuala Lumpur. Pemohon adalah pemilik berdaftar satu parcel Tiara Faber Condominium ('condominium'). Responden pertama adalah pihak berkuasa perancangan yang bertanggungjawab untuk mengawal dan mengawalselia perancangan yang sepatutnya di Kuala Lumpur selaras dengan Akta (Perancangan) Wilayah Persekutuan 1982. Responden kedua adalah pemilik berdaftar Lot 9420 dan juga pemaju untuk cadangan pembangunan tiga blok kondominium 37 tingkat itu. Responden kedua memfailkan permohonan kepada responden pertama untuk kebenaran merancang untuk cadangan pembangunan kondominium 37 tingkat tersebut. Iklan di akhbar tempatan dibuat oleh responden pertama untuk memberi notis mengenai pembangunan yang dicadangkan dan hak kepada orang yang berkelayakan untuk membuat bantahan. Selepas itu, melalui surat kepada Tiara Faber Management Corp, responden pertama memberitahu tentang pendengaran bantahan itu dan suami pemohon telah menghadiri sesi tersebut. Pembangunan yang dicadangkan itu dipertimbangkan oleh Jawatankuasa Teknikal Pusat Setempat ('JKTPS') dan seterusnya oleh Jawatan Kuasa Pusat Setempat ('JKPS'). Mesyuarat JKTPS dan JKPS telah dijalankan oleh responden pertama dan ahli-ahlinya yang terdiri daripada pengarah dari pelbagai jabatan teknikal dalaman Dewan Bandaraya Kuala Lumpur ('DBKL') dan agensi luaran lain. Komen dan input dari jabatan teknikal dalaman DBKL dan agensi luaran turut diambil untuk mempertimbangkan permohonan responden kedua untuk kebenaran merancang. JKPS meluluskan kelulusan bersyarat untuk pembangunan yang dicadangkan. Setelah menunaikan semua syarat yang dikehendaki oleh JKPS, Pesanan Pembangunan dikeluarkan oleh responden pertama kepada responden kedua. Oleh itu, permohonan ini.

Diputuskan, menolak permohonan dengan kos RM3,000:

(1) Hakmilik strata menunjukkan bahawa pemohon adalah pemilik berdaftar satu parcel condominium. Condominium itu terletak di Lot 47055 dan berdasarkan pelan lokasi, Lot 9420 yang mana cadangan pembangunan akan dilakukan berkongsi sempadan dengan Lot 47055. Dalam keadaan ini, pemohon telah memenuhi keperluan k 5(3)(a) Kaedah-Kaedah Rancangan (Pembangunan) 1970 ('Kaedah') sebagai pemilik berdaftar satu parcel condominium di mana tanahnya bersebelahan dengan tanah yang berkaitan dengan permohonan itu. Adalah salah untuk membantah bahawa parcel pemohon mesti menyentuh sempadan tanah pembangunan tersebut. Ini tentunya bukan niat perundangan dengan mempunyai k 5(3)(a) Kaedah (lihat perenggan 8–11).

(2) Kes ini melibatkan perubahan ketumpatan. Oleh itu, pemohon mempunyai locus standi untuk memulakan permohonan ini untuk semakan kehakiman (lihat perenggan 12–13).

(3) Keperluan di bawah k 5(5) dan 5(6) Kaedah telah dipatuhi apabila responden pertama menetapkan masa dan tempat sesi bantahan dan ini dimaklumkan kepada Tiara Faber Condominium Management Committee melalui surat dari responden pertama. Bacaan k 5(6) jelas menunjukkan bahawa tiada keperluan bagi responden pertama untuk mengeluarkan notis kepada pemilik berdaftar parcel condominium. Oleh itu, pertikaian bahawa responden pertama gagal mematuhi k 5(5) dan 5(6) Kaedah tidak dapat dipertahankan dan tidak mempunyai sebarang merit (lihat perenggan 17–18 & 20).

(4) Kaedah 5(8) Kaedah berkaitan dengan suatu tindakan selepas keputusan telah dibuat. Oleh itu, ia tidak boleh menjadi alasan untuk membatalkan keputusan yang telah dibuat oleh responden pertama untuk mengeluarkan perintah pembangunan tersebut. Berkenaan dengan sebab tidak rasional dan tidak munasabah tentang keputusan untuk mengeluarkan perintah pembangunan, responden pertama telah mematuhi semua kehendak Kaedah. Responden pertama telah membuat keputusannya selepas proses yang komprehensif dan setelah mempertimbangkan semua perkara dan komen yang relevan dari pembantah, Jabatan Teknikal Dalaman DBKL serta agensi luar (lihat perenggan 24–25).

(5) Mengenai isu ketidakpatuhan Pelan Struktur KL 2020, Pelan Struktur ini hanyalah dasar umum untuk membimbing pembangunan Kuala Lumpur. Pelan struktur ini tidak mengandungi sebarang perancangan fizikal terperinci untuk kawasan tertentu dan yang lebih penting instrumen ini tidak mengikat dan tertakluk kepada perubahan apabila keperluan timbul (lihat perenggan 33–34).

(6) Oleh itu, keputusan responden pertama dalam mengeluarkan perintah

pembangunan tidak dicemari dengan tidak sah, tidak rasional, tidak wajar atau prosedur yang tidak sesuai (lihat perenggan 38).]

Notes

For a case on certiori to quash decision of respondents, see 1(1) *Mallal's Digest* (5th Ed, 2017 Reissue) para 439.

For cases on development order, see 10(1) *Mallal's Digest* (5th Ed, 2017 Reissue) paras 236–237.

Cases referred to

Abdul Rahman bin Abdullah Munir & Ors v Datuk Bandar Kuala Lumpur & Anor [2008] 6 MLJ 704, CA (refd)

Akira Sales & Services (M) Sdn Bhd v Nadiah Zee bt Abdullah and another appeal [2018] 2 MLJ 537, FC (refd)

Lee Kew Sang v Timbalan Menteri Dalam Negeri, Malaysia & Ors [2005] MLJU 667; [2005] 3 CLJ 914, FC (refd)

R Rama Chandran v The Industrial Court of Malaysia & Anor [1997] 1 MLJ 145, FC (refd)

Ramachandran Appalanaidu & Ors v Dato Bandar Kuala Lumpur and Anor [2010] MLJU 1120, HC (distd)

V Paul Raj Chelladurai v Jabatan Telekom (M) Bhd & Ors [2000] 3 MLJ 652, CA (refd)

YAM Tunku Dato' Seri Nadzaruddin Ibni Tuanku Jaafar v Datuk Bandar Kuala Lumpur & Anor [2005] 5 MLJ 633, HC (folld)

Legislation referred to

Federal Territory (Planning) Act 1982 s 22(5)

Planning (Development) Rules 1970 rr 5, 5(3)(a) (5), (6), (8)

Rules of Court 2012 O 53 r 3(2)

Shahredzan Johan (RamRais & Partners) for the applicant.
B Thangaraj (M Nalani with him) (Thangaraj & Assoc) for the first respondent.
S Selvraj (Fernandez & Selvarajah) for the second respondent.

Nordin Hassan J:

INTRODUCTION

[1] This is the applicant's judicial review application seeking, inter alia, for an order of certiorari to quash the decision of the first respondent in issuing a development order dated 13 March 2017. This development order is for the development of three blocks of 37 storey condominium on Lot 9420, Mukim Kuala Lumpur, Wilayah Persekutuan, Kuala Lumpur.

THE GROUNDS FOR THE JUDICIAL REVIEW APPLICATION

[2] The applicant's grounds for this judicial review application are as follows:

(a) the issuance of the development order by the first respondent is tainted with illegality and procedure impropriety for the following reasons:

(i) non-compliance of r 5(5) and (6) of the Planning (Development) Rules 1970 for failure to issue a notice of the objection session to the applicant; and

(ii) non-compliance of r 5(8) for failure to notify the applicant in writing of the decision to issue the development order and consequently failure to give reason for the said decision;

(b) the decision to issue the development order is irrational and unreasonable for the following reasons:

(i) the development is not suitable to be developed at the site because of its social impact, environment and traffic concerns;

(ii) no review or study was conducted before the decision was made;

(iii) the area could not cope with the increase in population through the development;

(iv) the site of the development has been *gazetted* as Tenaga Nasional Bhd ('TNB') reserve land and not residential land; and

(v) based on the latest KL City Plan, the land has been earmarked as a green lung.

BRIEF FACTS

[3] The relevant facts in this application are as follows:

(a) the applicant is a registered owner of a parcel of Tiara Faber Condominium;

(b) the first respondent is the planning authority in charge for the control and regulating of proper planning in the city of Kuala Lumpur in accordance with the Federal Territory (Planning) Act 1982 ('the FTP Act 1982');

(c) the second respondent is the registered owner of Lot 9420, Mukim Kuala Lumpur, Wilayah Persekutuan Kuala Lumpur and also the developer for the proposed development of the three block, 37 storey condominium on the said Lot 9420;

(d) on 24 March 2016, the secondnd respondent filed an application to the first respondent for planning permission for the proposed development

of the said three storey condominium;

(e) an advertisement in local newspapers were made from 10–12 August 2016 by the first respondent to give notice of the proposed development and the right to qualified person to make objections;

(f) thereafter, by a letter to Tiara Faber Management Corp, the first respondent informed that the hearing of the objection to be held on 21 September 2016;

(g) the objection's session was conducted on the said 21 September 2016 and the applicant's husband attended the session;

(h) the proposed development was considered by Jawatankuasa Teknikal Pusat Setempat ('JKTPS') and subsequently by Jawatan Kuasa Pusat Setempat ('JKPS'). The meetings of JKTPS and JKPS were carried out by the first respondent and its members which consists of directors from various internal technical department of Kuala Lumpur City Hall ('DBKL') and other external agencies. Comments and input from the internal technical department of DBKL and external agencies were also taken in considering the second respondent application for planning permission;

(i) the external agencies that has given its input and comments includes Mineral and Geoscience Department, Ministry of Federal Territories, Solid Waste and Public Cleansing Management Corp and the office of Land and Mines;

(j) the internal technical department of DBKL that involved in the evaluation of the second respondent's application for planning permission and gave their inputs are the following:

(i) Jabatan Perancangan Bandaraya;

(ii) Jabatan Perancangan Ekonomi dan Penyelarasan Pembangunan;

(iii) Jabatan Kejuruteraan dan Pengangkutan Bandar;

(iv) Jabatan Perancangan lnfrastruktur;

(v) Jabatan Kawalan Bangunan; and

(vi) Jabatan Landskap dan Rekreasi;

(k) upon the request by JKTPS, the second respondent has also submitted a Traffic Impact Assessment Report ('TIA report') and in this regard, Jabatan Perancangan lnfrastruktur has conducted a study on the road circulation system for the area and identified a proper entrance and exist road;

(l) on 12 January 2017, JKPS granted a condition approval for the proposed

development. The conditions to be fulfilled by the second respondent are as follows:

(i) TNB requirements:
(1) providing space for 1 x SSU 11 kv; and
(2) the 2nd respondent is required to liase with TNB to determine the location and details of the specifications which is required. Space for this purpose must be marked on the proposed plans;

(ii) the width of the road to be surrendered at the centre should be 40 ft until the entrance to Block A and the remaining width of 30 ft until the existing road opposite Sri Tiara Condominium;

(iii) the depth of the green area to be marked as 1,500mm on the proposed plan;

(iv) DL type residential unit (dual-key same level) and PH type residential unit (dual-key different level), should be designed by providing only one main entrance. The floor area of the dual-key unit should be at least 1,000 sqft with a breakdown size of 70:30. A typical plan to show the design of the dual-key unit should be submitted with the appropriate scale;

(v) to pay the development charges for increase in population density from 60 ppa to 580 ppa. The amount of the development charges will be determined by JPPH; and

(vi) to pay the increase in ISF contribution and deposit;

(m) having fulfilled all the said conditions required by JKPS, on 3 March 2017 the development order was issued by the first respondent to the second respondent; and

(n) the decision by first respondent to issue the development order was communicated to Tiara Condominium Management Comittee by letter dated 1 June 2017.

FINDINGS OF THIS COURT

[4] It is trite law that the grounds upon which an administrative action is subject to control by judicial review are illegality, irrationality, procedural impropriety and to a certain extend disproportionality.

[5] In the recent Federal Court case, *Akira Sales & Services (M) Sdn Bhd v Nadiah Zee bt Abdullah and another appeal* [2018] 2 MLJ 537, the principles to judicial review as explained in *R Rama Chandran v The Industrial Court of Malaysia & Anor* [1997] 1 MLJ 145 has been re-emphasised at p 571 as follows:

A [45] In the same appeal, Edgar Joseph Jr FCJ (Eusoff Chin in agreement) said that an award could be reviewed for substance as well as for process:

> *It is often said that judicial review is concerned not with the decision but the decision making process. (See eg Chief Constable of North Wales Police v Evans* [1982] 1 WLR 1155). This proposition, at full face value, may well convey the impression that the jurisdiction of the courts in Judicial Review proceedings is confined to cases where the aggrieved party has not received fair treatment by the authority to which he has been subjected. Put differently, in the words of Lord Diplock in Council of Civil Service *Unions & Ors v Minister for the Civil Service* [1985] AC 374, where the impugned decision is flawed on the ground of procedural impropriety.
>
> *But Lord Diplock's other grounds for impugning a decision susceptible to Judicial Review make it abundantly clear that such a decision is also open a challenge on grounds of 'illegality' and 'irrationality' and, in practice, this permits the courts to scrutinise such decisions not only for process, but also for substance.*
>
> In this context, it is useful to note how Lord Diplock (at pp 410–411) defined the three grounds of review, to wit, (i) illegality, (ii) irrationality, and (iii) procedural impropriety. This is how he put it:
>
> > *By 'illegality'* as a ground for Judicial Review, I mean that the decision maker must understand correctly the law that regulates his decision making power and must give effect to it. Whether he has or not is par excellence a justiciable question to be decided, in the event of dispute, by those persons, the judges, by whom the judicial power of the state is exercisable.
> >
> > *By 'irrationality',* I mean what can by now be succinctly referred to as '*Wednesbury* unreasonableness' (see *Associated Provincial Picture Houses Ltd v Wednesbury Corp* [1948] 1 KB 223). It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it. Whether a decision falls within this category is a question that judges by their training and experience should be well equipped to answer, or else there would be something badly wrong with our judicial system. To justify the courts' exercise of this role, resort I think is today no longer needed to Viscount Radcliffe's ingenious explanation in *Edwards v Bairstow* [1956] AC 14, or irrationality as a ground for a court's reversal of a decision by ascribing it to an inferred though undefinable mistake of law by the decision maker. 'Irrationality' by now can stand on its own feet as an accepted ground on which a decision may be attacked by Judicial Review.
> >
> > I have described the third head as '*procedural impropriety*' rather than failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decisions. This is because susceptibility to judicial review under this head covers also failure by an administrative tribunal to observe procedural rules that the expressly laid down in the legislative instrument by which its jurisdiction is conferred, even where such failure does not involve any denial of natural justice.

Lord Diplock also mentioned '*proportionality*' as a possible fourth ground of review which called for development. A

[6] Before I consider the applicant's grounds for this judicial review application, there is a preliminary issue need to be determined which was raised by counsel for the respondents. The issue is whether the applicant has the locus standi to bring this application in view of sub-s of 5(3)(a) of the Planning (Development) Rules 1970 which provides: B

5 Planning permission in respect of a development *which involves increase in residential density or change of use of land.* C

(3) If the Commissioner is of the opinion that the proposed development is proper and may, subject to further inquiry be considered, he shall,by way of advertisement in four local papers which shall be in the ational language, English language, English language, Chinese language and Tamil language, *give notice of the proposed development and of the right to make objections by any person claiming to be —* D

(a) *the registered owners of lands adjoining the land* to which the application relates;

[7] On this issue, it is the respondents' contention that the applicant is not the registered owner of a parcel of condominium adjoining the said land which is to be developed. As such the applicant does not meet the requirement of sub-s 5(3)(a) of the said Rules. Hence, counsel for the respondents submits that the applicant is not clothe with the locus standi to initiate the present proceeding. E F

[8] Having perused the affidavit evidence and the documents exhibited therewith. I find, the strata title shows that the applicant is a registered owner of a parcel of Tiara Faber Condominium.

[9] Further, Tiara Faber Condominium is at Lot 47055 and based on the location plan, Lot 9420 where the proposed development to be carried out shares the boundry with Lot 47055. G

[10] In the circumstances, the applicant has fulfilled the requirement of r 5(3)(a) being the registered owner of a parcel of Tiara Faber Condominium where its land is adjoining land to which the application relates. H

[11] I agree with the submission by counsel for the applicant that it is misconceived to argue that the applicant's parcel must touch the boundry of the said development land. This certainly is not the intention of the Legislature in having r 5(3)(a). I

[12] As regard to this right to make objection, the case of *Ramachandran*

Appalanaidu & Ors v Dato Bandar Kuala Lumpur and Anor [2010] MLJU 1120 cited by counsel for the respondent is distinguishable on its facts. ln this case the application for planning permission does not involve any change in density or change in land use which is the pre requisite for the application of r 5. As such, it was decided that the first respondent is not obliged to accord the right to make objection or be heard. In contrast, the present case does involves a change in density.

[13] As such, it is my finding that the applicant has the locus standi to initiate this application for judicial review.

[14] On the issue of compliance with r 5(5) and 5(6) of the Planning (Development) Rules 1970, it is of assistance to reproduce the said provisions which are the following:

> (5) Any registered land owner as specified in paragraph (3)(a), (b) and (c) may, within four weeks from the date of advertisement, submit his objection, in writing to the Commissioner and when submitting his objection he shall indicate clearly his name, lot number and local postal address.
>
> (6) The Commissioner shall, after the expiry of the time specified ini paragraph (5), fix a time and place to here the registered land owners who have their objections in respect of the proposed development.

[15] The applicant's complaint here is that the first respondent has failed to issue a notice to the applicant with regard to the objection's session.

[16] In this regard, the provision of r 5(6) is plain and clear that the Commissioner is required to fix a time and place to hear the registered land owners in respect of the proposed development.

[17] This requirement has been complied with when the first respondent has fix a time and place of the objection session which is on the 21 September 2016 and this was informed to the Tiara Faber Condominium Management Committee by letter from the first respondent.

[18] The reading of r 5(6) clearly shows that there is no requirement for the first respondent to issue a notice to the registered land owner or in the present case the registered owner of the parcel of the condominium.

[19] In connection to this, it is a principle of law that where there is no procedural requirement, there cannot be non compliance thereof. This has been explained by Federal Court in *Lee Kew Sang v Timbalan Menteri Dalam Negeri, Malaysia & Ors* [2005] MLJU 667; [2005] 3 CLJ 914 in the following words:

> In our view, courts must give effect to the amendments. That being the law, it is the duty of the courts to apply them. So, in a habeas corpus application where the detention order of the Minister made under s 4(1) of the Ordinance or, for that matter, the equivalent ss. in ISA 1960 and DO(SPM) Act 1985, *the first thing that the courts should do is to see whether the ground forwarded is one that falls within the meaning of procedural non-compliance or not. To determine the question, the courts should look at the provisions of the law or the rules that lay down the procedural requirements. It is not for the courts to create procedural requirements because it is not the function of the courts to make law or rules. If there is no such procedural requirement then there cannot be non-compliance thereof. Only if there is that there can be non-compliance thereof and only then that the courts should consider whether, on the facts, there has been non-compliance.*

[20] Therefore, the contention that the first respondent has failed to comply with r 5(5) and (6) is untenable and devoid of any merit.

[21] In any event, the applicant has received the information of the said objection's session and the said session was attended by the applicant's husband. Therefore, the applicant, through his husband had the opportunity of being heard of their objections pursuant to r 5(5) and (6).

[22] The next ground raised by the applicant is the non compliance of r 5(8) which provides:

> (8) The decision of the Commissioner shall be conveyed in writing and sent by way of registered post to the applicant and those who have filed their objections.

[23] It is not disputed here that the decision to issue the development order was informed to Tiara Faber Management Corp by letter dated 1 June 2017 from the first respondent. The applicant has knowledge of the decision and hence has filed this judicial review application.

[24] As we know that judicial review pertains to the decision making process as well as its legality, rationality and reasonableness in arriving at the said decision. However, this r 5(8) relates to an act after the decision has been made. As such it cannot be a ground to quash the decision which has already been made by the first respondent to issue the said development order.

[25] As regards the grounds of irrationality and unreasonableness of the decision to issue the development order, as elucidated from the facts of this case, the first respondent has complied with all the requirement of Planning (Development) Rules 1970. The first respondent has come to its decision after a comprehensive process and after having considered all relevant matters and comments from the objectors, the internal technical departments of DBKL as well as the external agencies.

[26] Further, the applicant in his submission has raised the issue of the failure of the first respondent to give his reasons for his decision.

[27] I noted that this particular ground is not included as one of the grounds in the applicant's statement pursuant to O 53 r 3(2). Therefore it is not a ground pleaded by the applicant and should not be considered as clearly decided in the case of *V Paul Raj Chelladurai v Jabatan Telekom (M) Bhd & Ors* [2000] 3 MLJ 652, where it states:

> Order 53 r 3(1) of the RHC emphasises the principle that a party is bound by his own pleadings and *since that order and rule is mandatory in nature, the omission to plead in the statement the two objections* raised before us is sufficient reason for us to hold that this *appeal lacks merits and on that conclusion we dismiss it with costs*, confirm the order of the High Court and order that the deposit be paid out to the respondents to account of their taxed costs.

[28] Be that it may, there is no statutory duty imposed on the first respondent to give his reason under the Federal Territory (Planning) Act 1982 ('the FTP Act') or the Planning (Development) Rules 1970.

[29] The only provision that requires reasons to be given is where the planning permission is granted with conditions or if it is refused as provided under sub-s 22(5) of the FTP Act which states:

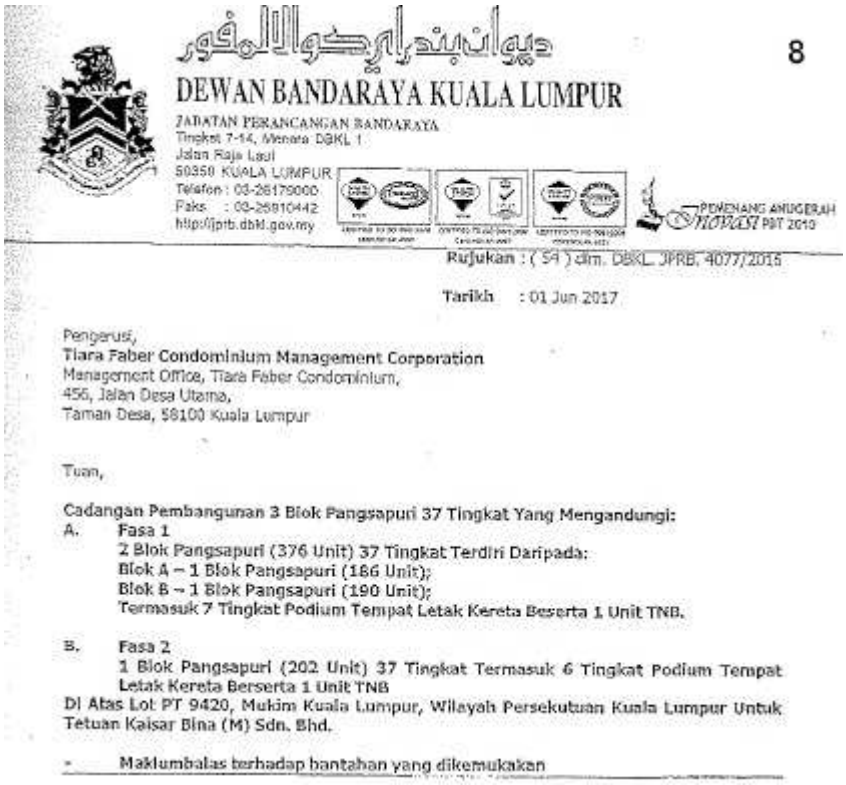
> 22(5) Upon the receipt of an application for planning permission the Commissioner shall within such time as may be prescribed either *grant or refuse the application and when the application is granted subject to condition or refused, the Commissioner shall give his reasons in writing for his decision.*

[30] On this issue, it is instructive to make reference to the case of *YAM Tunku Dato' Seri Nadzaruddin Ibni Tuanku Jaafar v Datuk Bandar Kuala Lumpur & Anor* [2005] 5 MLJ 633 which states:

> [15] Learned counsels for the first respondent and second respondent respectively, were united in their stand that there is no duty on the part of the first respondent to give reasons to the applicant in granting the third development order to the second respondent. According to them the cases relied by the applicantmust be distinguished.
>
> [16] I am in agreement with the respondents. To me, s 22(5) of the FTPA only requires the first respondent to give reasons to the second respondent as such duty arises when the planning permission is granted with conditions or if it is refused. The section reads as follows:
>
> > 22(5) Upon the receipt of an application for planning permission the Commissioner shall within such time as may be prescribed either *grant or refuse the application and when the application is granted subject to condition or refused, the Commissioner shall give his reasons in writing for his decision.*

[17] *Clearly, the above section does not place a duty to the first respondent to give reasons to the applicant who in this case is a third party objector.* The applicant placed great reliance on the MPPP's case, but it should be noted that in that case the Federal Court was dealing with the duty to gave reasons that was owned to the applicant land owner and not a third party objector like the applicant. Hence, the MPPP's case do not assist the applicant.

[31] In any event, the 1st respondent in his letter dated 1 June 2017 to Tiara Faber Condominium Management Corp has gave his brief reasons for his decision to issue the development order. The said letter is reproduced herein:



دیوان بندراي کوالالمفور

8

DEWAN BANDARAYA KUALA LUMPUR

JABATAN PERANCANGAN BANDARAYA
Tingkat 7-14, Menara DBKL 1
Jalan Raja Laut
50350 KUALA LUMPUR
Telefon : 03-26179000
Faks : 03-26910442
http://jprb.dbkl.gov.my

PEMENANG ANUGERAH SKOROS PBT 2010

Rujukan : (54) dlm. DBKL.JPRB. 4077/2015

Tarikh : 01 Jun 2017

Pengarusi,
Tiara Faber Condominium Management Corporation
Management Office, Tiara Faber Condominium,
456, Jalan Desa Utama,
Taman Desa, 58100 Kuala Lumpur

Tuan,

Cadangan Pembangunan 3 Blok Pangsapuri 37 Tingkat Yang Mengandungi:

A. **Fasa 1**
2 Blok Pangsapuri (376 Unit) 37 Tingkat Terdiri Daripada:
Blok A – 1 Blok Pangsapuri (186 Unit);
Blok B – 1 Blok Pangsapuri (190 Unit);
Termasuk 7 Tingkat Podium Tempat Letak Kereta Beserta 1 Unit TNB.

B. **Fasa 2**
1 Blok Pangsapuri (202 Unit) 37 Tingkat Termasuk 6 Tingkat Podium Tempat Letak Kereta Berserta 1 Unit TNB

Di Atas Lot PT 9420, Mukim Kuala Lumpur, Wilayah Persekutuan Kuala Lumpur Untuk Tetuan Kaisar Bina (M) Sdn. Bhd.

- Maklumbalas berhadap bantahan yang dikemukakan

Saya dengan hormatnya diarah merujuk kepada surat tuan yang diterima pada 24 Ogos 2016 terhadap perkara di atas.

2. Permohonan di atas beserta bantahan yang dikemukakan oleh tuan telah dipertimbangkan oleh Datuk Bandar Kuala Lumpur di Mesyuarat Jawatankuasa Pusat Setempat pada 12 Januari 2017. Datuk Bandar telah mengambil maklum bantahan yang dikemukakan oleh tuan dan telah memberi kelulusan perancangan berkenaan pembangunan di atas pada 13 Mac 2017 berasaskan justifikasi-justifikasi berikut:

i. Kupayaan infrastruktur utama iaitu jalan keluar masuk mampu menyokong pembangunan yang dicadangan dan kesan lalulintas minima kepada kawasan sekitar. Berdasarkan kajian Impak Trafik (TIA) pemohon perlu menaiktaraf infrasturktur jalan seperti berikut :
   a. Menaiktaraf persimpangan Jalan Desa Bakti/ Jalan Desa Utama untuk menampung pertambahan lalulintas.
   b. Naiktaraf siarkaki sekeliling tapak bagi memberi laluan yang selesa kepada pejalan kaki

-/2...

2

9

DBKL.JPBB.4077/2016.mmb...

- 2 -

ii. Menyerahkan sebahagian tapak kepada sekolah dan kondominium bersebelahan untuk cadangan jalan.
iii. Menyediakan 2 meter perameter planting di sebahagian tapak cadangan dan 6 meter anjakan bangunan sebagai ruang lega antara pembangunan sedia ada dan pembangunan yang dicadangkan.
iv. Pematuhan kepada aspek teknikal perancangan berdasarkan Garispanduan Perancangan seperti Penyediaan tlk yang mencukupi iaitu 2 petak untuk 1 unit kediaman, anjakan bangunan, kemudahan penduduk dalam bangunan yang mencukupi seperti dewan serbaguna, tadika, pejabat pengurusan, pejabat dan lain-lain ruang kemudahan.
v. Keadaan tapak yang rata dan sesuai untuk pembangunan.

3. Walaubagaimana pun bagi memastikan penduduk sekitar mendapat maklumat yang lebih terperinci dan komprehensif berkenaan dengan pembangunan yang dicadangkan, DBKL telah mensyaratkan agar pemaju mengadakan **"communication strategy"** iaitu proses penerangan oleh pemaju kepada penduduk sekitar berkenaan dengan perlaksanaan projek yang akan dibangunkan kelak. Bagi tujuan itu, Pemaju perlu melaksanakan **"communication strategy"** melalui 2 kaedah iaitu :

i) Menyediakan edisi khas di dalam 2 surat khabar iaitu berbahasa Inggeris dan Melayu untuk memaklumkan kepada orang awam mengenai pembangunan yang akan dijalankan. Pemaju hendaklah berhubung dengan Jabatan Perancangan Bandaraya, Dewan Bandaraya Kuala Lumpur untuk semakan terhadap kandungan edisi khas tersebut sebelum ia dikeluarkan.

ii) Mengadakan perjumpaan dengan penduduk sekitar bagi memberi penerangan mengenai pembangunan yang akan dijalankan supaya penduduk di kawasan sekitar mendapat maklumat yang jelas terhadap pembangunan ini dan dapat mengetahui faedah yang diperolehi oleh mereka daripada perlaksanaan projek tersebut.

Sekian, terima kasih.

`BERKHIDMAT UNTUK NEGARA'
`BERSEDIA MENYUMBANG, BANDAR RAYA CEMERLANG'

Saya yang menurut perintah,

(SULAIMAN BIN MOHAMED)
Pengarah
Jabatan Perancangan Bandaraya
b.p. Datuk Bandar Kuala Lumpur

18

[32] In the circumstances, the issue raised with regard to failure to give reasons for the first respondent's decision to issue the development order does not affect the validity of the decision.

[33] On the issue of non-compliance with the KL Structure Plan 2020, I agree with counsel for the respondent that this structure plan is merely a general policies to guide the development of Kuala Lumpur. This can be seen in section 1.2, para 3 of the structure plan which states:

> The Kuala Lumpur Structure Plan 2020 (the Plan) contains visions, goals, policies and proposal to guide the development of Kuala Lumpur (the City) over the next 20 years.

[34] This structure plan does not contain any detailed physical planning for specific area and more importantly this instrument is not binding and subject to changes when the needs arises.

[35] This issue has also been decided by the Court of Appeal in the case of *Abdul Rahman bin Abdullah Munir & Ors v Datuk Bandar Kuala Lumpur & Anor* [2008] 6 MLJ 704 where it states:

> [85] *We therefore find no basis in the appellants' contention that the KL Structure Plans is a legally binding instrument.* We agree with the learned judge that it is a document merely stating the policies of the first respondent and thus not legally binding on anyone.
>
> [86] It is also not a piece of legislation which imposes a public duty upon the first respondent to perform any specific act.

[36] For sake of completeness, the available evidence shows that the said development land is not a Tenaga Nasional Bhd's reserve land and its category of land use is building and the condition is for residential. The said land was also never been *gazetted* for a public purpose or as a green lung.

[37] The first respondent has also considered the traffic impact assessment report submitted by the second respondent and the objections by the registered owners of adjourning land as well as from any person who attended the objections session on the 21 September 2016.

[38] Having considered all the relevant issues raised in this application, I find the decision of the first respondent in issuing the development order dated 13 March 2017 is not tainted with illegality, irrationality, unreasonableness or procedure impropriety.

[39] As such the applicant's application for judicial review of the said

A decision is dismissed with costs of RM3,000 to be paid to each respondent.

Application dismissed with costs of RM3,000.

Reported by Nabilah Syahida Abdullah Salleh

B

C

D

E

F

G

H

I